## SUPREME COURT OF THE UNITED STATES.

NORTHWESTERN MUTUAL LIFE INSURANCE COMPANY, Petitioner, *v.* J. WILLIAM McCUE, SAMUEL O. McCUE, HARRY M. McCUE AND RUBY G. McCUE, Infants, by Marshall Dinwiddie, Their Next Friend, et al.

(October Term, 1911.)

[February 19, 1912.]

**1. Life Insurance—Risk—Execution for Crime.**—A policy of life insurance does not insure against death by a legal execution for crime, under the general public policy rule.

**2. Same—Acceleration of Maturity—Implied Obligation.**—It cannot be that one of the risks covered by a contract of insurance is the crime of the insured. There is an implied obligation on his part to do nothing to wrongfully accelerate the maturity of the policy. Public policy forbids the insertion in a contract of a condition which would tend to induce crime, and as it forbids the introduction of such a stipulation it also forbids the enforcement of a contract under circumstances which cannot be lawfully stipulated for.

**3. Same—Conflict of Laws.**—Where an application for life insurance was made in Virginia, February 25, 1904, and the policy was delivered to insured there on March 15, 1904, when he gave his note for the premium which was payable at that place and subsequently paid there, and it is provided in the policy that it should not take effect until the first premium should be actually paid, and following that provision is this: "In witness whereof the Northwestern Mutual Life Insurance Company, at its office in Milwaukee, Wisconsin, has by its president and secretary signed and delivered this contract, this fifteenth day of March, one thousand nine hundred and four," manifestly this was not intended to affect the preceding provision fixing the time when the policy should go into effect, nor the legal consequences which followed from it, and the policy must be held to be a Virginia and not a Wisconsin contract.

**4. Life Insurance—Mutual Company—Membership and Effect.**—Although it may be true that a person who insures with the company becomes a member thereof and that his interest is fixed at the amount of his insurance, what constitutes his title or right is necessarily his policy. What entitles him to a realization of the benefits of his membership is necessarily, again, his policy, if the manner of his death be not a violation of it.

**5. Conflict of Laws—Public Policy.**—If the public policy of Virginia were the same as, it is contended, that of Wisconsin is, quære whether this court should have to yield to it.

**6. Life Insurance—Policy Measure of Rights Thereunder.**—The policy is the measure of the rights of everybody under it, and as it does not cover death by the law there cannot be recovery either by the insured's estate or by his children.

On writ of certiorari to the United States Circuit Court of Appeals for the Fourth Circuit.

Mr. Justice McKENNA delivered the opinion of the Court.

The question in the case is whether death by the hand of the law in execution of a conviction and sentence for murder, is covered by a policy of life insurance though such manner of death is not excepted from the policy, there being no question of the justness of the sentence.

The case was in equity and brought in the Corporation Court for the city of Charlottesville, State of Virginia, by respondents, children and sole heirs of James S. McCue, by Marshall Dinwiddie, their next friend, upon a policy of life insurance issued to McCue by petitioner, named herein as the insurance company.

The main defense of the insurance company was (there were some technical defenses with which we we are not concerned) that McCue came to his death by hanging after conviction and sentence for the murder of his wife.

The suit was brought under the laws of the Commonwealth of Virginia against the insurance company, the People's National Bank, of Charlottesville, as garnishee, and the executors of McCue's estate.

The case was removed on the petition of the insurance company on the ground of a separable controversy to the Circuit Court of the United States for the Western District of Virginia. In that court there was a demurrer filed to the bill which raised the question as to the proper arrangement of the parties and whether the heirs or the executors were the parties to recover on the policy, assuming that the insurance company was liable. In the answer the same questions were again raised and all liability of the insurance company denied, principally on the ground of the manner by which McCue came to his death.

At the trial the technical defenses were waived and by agreement of the parties the heirs of McCue and his executors were treated as parties plaintiff. The court considering the cause as one at law, and a jury having been waived by the parties, adjudged on the pleadings and an agreed statement of facts, "that the plaintiffs take nothing by their bill, and that said defendant go without day," with costs, the latter to be paid by a deposit made in the registry of the courts in refund of

the premium paid by McCue, as far as it would go. The judgment was reversed by the Court of Appeals and a new trial ordered. This certiorari was then petitioned for and allowed.

The facts as agreed are these: The insurance company is a corporation duly organized under the laws of Wisconsin and a citizen and resident thereof. It is a mutual insurance company, with the power and obligations given to and imposed upon it by certain acts of the legislature of Wisconsin, which acts constitute its charter.

The People's National Bank of Charlottesville was made a party solely as garnishee, it having certain sums of money belonging to the insurance company in its possession.

McCue made written application to the insurance company in his own handwriting for the policy in suit, in pursuance of which the policy was issued for the sum of $15,000 on his life. He paid premiums as follows: When the policy was delivered to him he gave his note for the sum of $427.50 for the premium to E. L. Carroll and L. Fitzgerald, payable to their order, six months after date, at the Jefferson National Bank, Charlottesville, Virginia. Carroll & Fitzgerald at the time were soliciting insurance for T. A. Cary, the general agent of the insurance company in Virginia. The note was endorsed by Carroll & Fitzgerald to Cary, with the following memorandum attached: "$427.50. Hold this note in Mr. Cary's office (don't use bank). Notify Mr. Mc McC. about thirty days before due, and send it to E. L. Carroll for collection." Carroll & Fitzgerald gave their individual notes to Mr. Cary, amounting to $427.50, on which he advanced the money to the company and held the notes for collection, with McCue's note as collateral.

The company received, at its home office in Milwaukee, the amount of the premium in cash from Cary on May 2, 1904, but had no knowledge of the note arrangement between McCue, Carroll & Fitzgerald and Cary. The note was paid by McCue by checks after he had been arrested, he protesting his innocence, "which facts were known to Cary." The note arrangement was a general custom among soliciting agents for the company. Other facts will be noted hereafter.

The main question in the case is, as we said, the liability of the company under the circumstances. Or, to put it more abstractly for the present purpose of our discussion, whether a policy of life insurance insures against death by a legal execution for crime?

The question was before this court in Burt *v.* Union Central Life Insurance Company, 187 U. S. 362. In the policy passed on, as in the policy in the case at bar, there was no provision excluding death by the law. It was decided, however, that such

must be considered its effect, though the policy contained nothing covering such contingency. These direct questions were asked: "Do insurance policies insure against crime? Is that a risk which enters into and becomes a part of the contract?" And answering, after discussion, we said: "It can not be that one of the risks covered by a contract of insurance is the crime of the insured. There is an implied obligation on his part to do nothing to wrongfully accelerate the maturity of the policy. Public policy forbids the insertion in a contract of a condition which would tend to induce crime, and as it forbids the introduction of such a stipulation it also forbids the enforcement of a contract under circumstances which can not be lawfully stipulated for." Cases were cited, among others Ritter *v.* Mutual Insurance Company, 169 U. S. 139. There it was held that a life insurance policy taken out by the insured for the benefit of his estate was avoided when one of sound mind intentionally took his life, irrespective of the question whether there was a stipulation in the policy or not. And the conclusion was based, among other considerations, upon public policy, the court saying that "a contract, the tendency of which is to endanger the public interest or injuriously affect the public good, or which is subversive of sound morality, ought never to receive the sanction of a court of justice or be made the foundation of its judgment."

These cases must be accepted as expressing the views of this court as to the public policy which must determine the validity of insurance policies, and which they can not transcend even by explicit declaration, much less to be held to transcend by omissions or implications, and we pass by, therefore, the very interesting argument of counsel for respondents as to the indefinite and variable notions which may be entertained of such policy according to times and places and the temperaments of courts, and the danger of permitting its uncertain conceptions to control or supersede the freedom of parties to make and to be bound by contracts deliberately made. We come, therefore, immediately to the special contention of respondents, that the contract in controversy in a Wisconsin contract, and is not offensive to the public policy of that State or to its laws, but was indeed, as it is contended, made in conformity to the laws of that State, and carries all of their obligations.

The obligation of a contract undoubtedly depends upon the law under which it is made. In which State, then, Virginia or Wisconsin, was the policy made? In Equitable Life Assurance Society *v.* Clements, 140 U. S. 226, the question arose whether the contract of insurance sued on was made in New York or Missouri. The assured was a resident of Missouri,

and the application for the policy was signed in Missouri. The policy, executed at the office of the company, provided that the contract between the parties was completely set forth in the policy and the application therefor, taken together. The application declared that the contract should not take effect until the first premium should have been actually paid during the life of the person proposed for assurance. Two annual premiums were *paid in Missouri, and the policy,* at the request of the assured, was transmitted to him in Missouri, and there delivered to him. The court said: "Upon this record the conclusion is inevitable that the policy never became a completed contract, binding either party to it, until the delivery of the policy and the payment of the first premium in Missouri; and that consequently that the policy is a Missouri contract, and governed by the laws of Missouri."

In Mutual Life Insurance Company of New York *v.* Cohen, 179 U. S. 262, the insurance policy contained a stipulation that it should not be binding until the first premium had been paid and the policy delivered. The premium was paid and the policy delivered in Montana. It was held that "under these circumstances, under the general rule, the contract was a Montana contract and governed by the laws of that State." Citing Equitable Life Assurance Society *v.* Clements, supra.

The same conditions existed in Mutual Life Insurance Company *v.* Hill, 193 U. S. 551, and it was decided, the two cases above mentioned being cited, that the policy of insurance involved was a Washington contract, not a New York contract.

In the case at bar the application was made by McCue at Charlottesville, Virginia, February 25, 1904, and the policy was delivered to him there on March 15, 1904, when he gave his note for the premium which was payable at that place and subsequently paid there. And it is provided in the policy that it should not take effect until the first premium should be actually paid. Following that provision is this: "In witness whereof the Northwestern Mutual Life Insurance Company, at its office in Milwaukee, Wisconsin, has by its president and secretary signed and delivered this contract, this fifteenth day of March, one thousand nine hundred and four." But manifestly this was not intended to affect the preceding provision fixing the time when the policy should go into effect, nor the legal consequences which followed from it. In Equitable Life Assurance Society *v.* Clements the policy was executed at the company's office in New York. The exact conditions therefore existed which made, in the cases cited, the policies involved therein not New York contracts but, respectively, Missouri,

Montana and Washington contracts. The policy, therefore, in the case at bar, must be held to be a Virginia and not a Wisconsin contract.

Respondents, however, contend that "the right asserted is a property right vested by the special statute of incorporation which is not divested by crime," and that "the charter controls the rights of members irrespective of the place where such rights may have been acquired." To support the contention that the right asserted is a property right, respondents adduce sections 1, 4, 7 and 20 of the charter. Their argument is brief and direct, and we may quote it. It is as follows: "Under the charter of the company McCue occupied the relation of a member of the company. This was a valuable property right. Upon his death this membership passed to his executors." And further: "The charter of the company, § 1, provided that certain persons named 'and all other persons who may hereafter associate with them in the manner hereinafter prescribed shall be, and are, declared a body politic and corporate. Section 4 prescribes that persons who shall hereafter insure with the company 'shall thereby become members thereof.' And section 7 prescribes the manner in which this membership is to be perfected. 'Every person who shall become a member of this association, by effecting insurance therein, shall, the first time he effects insurance, pay the rates fixed by the trustees,' etc. There can be no doubt, then, that McCue was a member of this corporation. He insured with the company, and thereby he became a member. His interest in the company was fixed by the amount of his insurance. This membership constituted a vested property right. He was eligible as an officer, and entitled to vote in the management of the company (s. 20); entitled to the dividends on the surplus and profits (§ 2, § 13) and was a joint owner of the assets of the company." But this is assuming what is to be proved. It may be true that a person who insures with the company becomes a member thereof and that his interest is fixed at the amount of his insurance. But what constitutes his title or right? Necessarily his policy. What entitles him to a realization of the benefits of his membership? Necessarily, again, his policy, if the manner of his death be not a violation of it. We need not follow counsel, therefore, through their argument as to the rights of property and the rules of its devolution, which, it is contended, must obtain, whatever be the act or guilt of the person producing it. The question before us, and the only question, is: What rights did McCue's estate and children get by his policy? And we are brought back to the simple dispute

as to whether the policy covers death by the hand of the law. This court has pronounced on that dispute, and its ruling must prevail in the Federal courts of Virginia, in which State the contract was made. And it is consonant with the ruling in the State courts. In Plunkett *v.* Supreme Conclave Improved Order of Heptasophs, 105 Va. 643, a certificate of membership in the Conclave, which was issued to one Charles W. Plunkett, his wife being beneficiary, was considered. One of the conditions was that Plunkett comply with the laws, rules and regulations then governing the Conclave or that might in the future be enacted. There was no provision against suicide in the laws, rules or regulations when the certificate was issued. Such a provision was subsequently enacted. Plunkett committed suicide, and the Order refused to pay benefits. Plunkett's wife brought suit to recover them and asserted a vested interest in the benefits under the certificate. The contention was rejected. The trial court held that the forfeiture of the rights under the certificate, if the insured while sane committed suicide, was valid, because (1) it involved no vested right of the insured, and (2) because it was a fundamental, though unexpressed, part of the original contract that the insured should not intentionally cause his own death. And the court added: "Inasmuch as the original contract and by-laws were silent upon the subject of suicide by the insured while insane, the new by-law is valid, because there can be no such thing as a vested right for a sane man to commit suicide, and for the further reason that it is nothing more than a written expression of the provision which the law had read into the contract at its inception."

The Supreme Court of Appeals affirmed the judgment, quoting the reasoning of the trial court, and added to it the considerations of public policy expressed in the Burt case and Bitter case, supra, and other cases. If the public policy of Virginia were the same as, it is contended, that of Wisconsin is, whether this court should have to yield it, we are not called upon to decide.

Being of opinion that McCue's policy was a Virginia contract, it may be unnecessary to review the cases relied on by the respondents, which they contend declare the public policy of the State of Wisconsin. It may, however, be said that the cases are not absolutely definite.

Two cases only are cited, McCoy *v.* Northwestern Mutual Life Association, 92 Wis. 577, and Patterson *v.* The Natural Premium Ins. Co., 100 Wis. 118. We will not consider the facts in the first case. It is enough to say that the court, following a ruling that it had pronounced in other cases, said, "if a contract for life insurance does not provide against death by sui-

cide or self-destruction, then such cause of death does not constitute a defense," citing four cases. The second also presented one of suicide, the insured being sane. It was contended that the policy did not cover such a risk, because (1) an incontestable clause (there being one) in the contract, did not cover such a death; (2) if it could be held so in terms it would be void as against public policy; (3) suicide was a crime and hence within a stipulation against death in violation of law.

The reliance of the insurance company to support its contentions was upon the Ritter case, supra. The court, however, reiterated its former ruling as to death by suicide, though it recognized the cogency of the reasoning of the Ritter case, that the insured should do nothing to accelerate the contingency of the policy, saying (page 124): "were the question a new one in law" the argument, "would be well nigh irresistible especially where, as in the Ritter case, the policy runs in favor of the estate of the insured, and the proceeds will go to the enrichment of such estate, instead of to other beneficiaries."

There were other beneficiaries in the case, the policy having been assigned with the consent of the company to the children of the insured. Commenting further on that fact, the court said it brought the case within the principle of certain cases which were cited, but added "nor would the application of that principle to this case necessarily conflict with the Ritter case, where the policy was in favor of the estate of the insured. It may well be in such a case that the intentional suicide of the insured while sane would prevent a recovery by his personal representatives, and yet not prevent a recovery in case a policy in favor of beneficiaries who had a subsisting vested interest in the policy at the time of the suicide, and who could not, if they would, prevent the act of the insured." McCue's policy was in favor of his estate and comes within the concession made by the Supreme Court to the reasoning of the Ritter case.

The court did not discuss considerations of public policy, but we may assume it found nothing offensive to such policy in a contract of insurance which covered death by suicide, and it may be supposed that the court would find nothing repugnant to public policy in a contract which did not except death for crime. However, we need not speculate, as the Wisconsin law does not control the policy in suit.

One other contention of respondents remains to be noticed. It is contended that if the McCue estate cannot recover, the innocent parties, his children, will be admitted as claimants. To this contention we repeat what we have said above, the policy is the measure of the rights of everybody under it, and as it does not cover death by the law there cannot be recovery either by McCue's estate or by his children.

Judgment of the Court of Appeals is reversed, and that of the Circuit Court is

Affirmed.

True copy. Test: Clerk Supreme Court, U. S.

**Note.**

By the rendition of this decision of the Supreme Court of the United States is terminated a long drawn out contest over the liability of an insurance company under a policy upon the life of the insured who met his death by legal execution for crime committed. Rightly or wrongly the Supreme Court stands committed to the rule that public policy, considered without reference to the laws of any particular state, forbids a recovery under a life policy for death by such cause, even though such risk were expressly assumed under the policy.

We will not discuss the correctness of its position upon this point. But upon the two other questions decided, viz., whether the insurance contract was a Wisconsin contract or no. and whether a person insuring his life in a mutual company becomes bound by the charter of such company, including the laws and public policy of the state of its incorporation, the opinion does not seem to be above criticism.

Upon the first point, and this is the weak point of the decision, the court recites the agreed statement of facts (which is of course conclusive) and then proceeds to render its decision upon a different state of facts. The agreed statement of facts recites that the premium was paid in cash at the home office in Milwaukee and the note arrangement was to be left out of consideration, but the court then says, reciting the facts upon which it is basing its decision, that the premium **was payable and paid at Charlottesville in Virginia,** and then says that, as this case is precisely similar to Equitable Life Assurance Society *v.* Clements; Mutual Life Ins. Co. *v.* Cohen and Mutual Life Ins. Co. *v.* Hill, it follows these cases and holds the policy to be a Virginia and not a Wisconsin contract. The facts **are** the same with **this important exception.** What the court says as to the provision that the policy should not take effect until the first premium should be actually paid, as postponing the effect of the recited delivery to such time, is no doubt true, but loses its weight in support of the decision here when such payment subsequently took place in Wisconsin, as conclusively established of the agreed statement of facts.

Passing now to the consequences of insurance taken in a mutual company, it seems to us that the court does the very thing of which it accuses counsel, that is it argues in a circle and assumes what is to be proved. It admits that a person who insures with a company may become a member thereof and that his interest is fixed at the amount of his insurance, but then says that his policy constitutes his title or right. The policy is of course the contract primarily, but if the insured is a member of the Wisconsin company, he is bound by its charter provisions, and its charter includes the laws and public policy of Wisconsin, and the contract between him and the company is the policy construed with reference to such laws and public policy. It may be urged that the insurance companies in the three cases above cited and followed by the court here were also mutual companies, but the answer to this is, that this point, of the

binding force of the charter and laws of the incorporating state, was not urged or brought to the attention of the court in any of these cases.

The reasoning of the court in support of its decision upon these two points seems to us very inconclusive. The Plunkett case, also relied on as an analogous case, supports the contention that a member of a mutual insurance company is bound by the laws, rules and regulations governing the company.

It is true that a term of a contract of insurance in a mutual insurance company of one state, which is contrary to the laws or public policy of another state, could not be enforced in the courts of that state, and the federal court sitting in that state must by statute enforce the laws of that state in cases where they apply, but we submit that in a case like this, brought in a federal court in Virginia upon a contract of insurance in a Wisconsin mutual company, the law of Virginia does not apply, but the law of Wisconsin, particularly where the question is as to the effect of the charter of the corporation of Wisconsin.

However, it is probable that the court would have arrived at the same decision of this case had it considered the contract a Wisconsin one, judging by the comments of the court upon the Wisconsin cases, and we can not say that, had it done so, it would have committed error. They are certainly not conclusive as to a right to recover under this policy even under the Wisconsin laws and public policy, considering them as precedents establishing the rule of decision for this case.

J. F. M.